SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No.

THE STATE OF FLORIDA, EX REL., BENJAMIN F. FINLEY, PETITIONER,

vs.

THE BOARD OF CONTROL OF FLORIDA, A BODY CORPORATE UNDER THE LAWS OF THE STATE OF FLORIDA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPT. 12, 1951

—7071

[fol. 1] [Caption omitted]

[fol. 2]

IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA, ex rel., BENJAMIN F. FINLEY, Plaintiff,

vs.

THE BOARD OF CONTROL OF FLORIDA, a body corporate under the laws of the State of Florida, J. THOMAS GURNEY, N. B. JORDAN, THOMAS W. BRYANT, J. HINSON MARKHAM, and HOLLIS RINEHART, as members of the Board of Control of the State of Florida; J. HILLIS MILLER, as President of the University of Florida, and R. S. JOHNSON, as Registrar of the University of Florida, Respondents

PETITION FOR ALTERNATIVE WRIT OF MANDAMUS—Filed May 25, 1949

To the Honorable Judges of the Above Styled Court:

Your petitioner, Benjamin F. Finley, respectfully presents unto the Court:

1

That your petitioner is a citizen and a resident of Marion County; that the respondent, the Board of Control of Florida, is a body corporate created by the laws of the State of Florida and its principal office and place of business is in Tallahassee, Leon County, Florida; that the respondent, J. Thomas Gurney, is a citizen and resident of Orange County, Florida and is the duly appointed, qualified and acting member and chairman of said Board of Control; that the respondent, N. B. Jordan, is a citizen and resident of Gadsden County, Florida, and is a duly appointed, qualified and acting member of said Board of Control; that the respondent Thomas W. Bryant, is a citizen and resident of Polk County, Florida, and is a duly [fol. 3] appointed, qualified and acting member of said Board of Control; that the respondent, J. Hinson Markham, is a citizen and resident of Duval County, Florida, and is a duly appointed, qualified and acting member of said Board of Control; that the respondent, Hollis Rinehart,

is a citizen and resident of Dade County, Florida, and is a duly appointed, qualified and acting member of said Board of Control; that the respondent, J. Hillis Miller, is a citizen and resident of Alachua County, Florida, and is the duly appointed and qualified president of said University of Florida; that the respondent, R. S. Johnson, is a citizen and resident of Alachua County, Florida, and is the duly appointed and qualified registrar of said University of Florida.

2

That the petitioner desires to study agriculture at the graduate school at the University of Florida which is supported and maintained by the taxpayers of the State of Florida and has been arbitrarily refused admission to said University.

3

That the petitioner has a B.S. Degree from Florida A. & M. College.

4

That on or about the 4th day of April, A. D., 1949, your petitioner, duly applied for admission to the University of Florida for the purpose of entering the graduate school for the study of agriculture. He then possessed, and still possesses, all the scholastic, moral and other lawful qualifications prescribed by the Constitution and Statutes of the State of Florida, by the Board of Control of the State of Florida and by all the duly authorized officers and agents of said Board of Control and the University of Florida. He was then, and is still, ready and willing to pay all uniform fees and charges and to conform to all lawful uniform rules and regulations established by lawful authority for admission to said class.

[fol. 4] 5

That contrary to the usual and customary procedure, the respondent, R. S. Johnson, forwarded petitioner's application to the respondent, the Board of Control, and thereafter, to-wit: the 13th day of May, A. D., 1949, your petitioner, by and through his attorney, did appear before said Board of Control at a regular meeting of said Board of Control in Tallahassee, Leon County, Florida, for a

hearing upon his application for admission to the University of Florida graduate school. That at said hearing the respondents, J. Thomas Gurney, N. B. Jordan, Thomas W. Bryant, J. Hinson Markham and Hollis Rinehart, did deny the application of your petitioner and did refuse to grant him admission to the graduate school for the study of agriculture at the University of Florida, and did then and there announce that said application was denied solely because of certain provisions of the Constitution and Statutes of the State of Florida which deny the right of your petitioner admission to the said University solely because of your petitioner's race and color, thus denying unto your petitioner the equal protection of laws solely on the ground of his race and color, contrary to the Constitution of the United States.

6

That the University of Florida is the only University in the State of Florida supported and maintained by the taxpayers of the State of Florida which a graduate course in the study of agriculture is offered.

7

That the respondents, J. Hillis Miller, as president of the University of Florida and R. S. Johnson, as registrar, have refused to admit your petitioner to the University of Florida, solely because of race and color, thus denying your petitioner equal protection of the law, while at the same time admitting white applicants with less qualifications than your petitioner.

[fol. 5] 8

The petitioner further shows that he has no speedy, adequate remedy at law and that unless a Writ of Mandamus is issued he will be denied the right and privilege of pursuing the course of instruction at the University of Florida as hereinabove set out.

Your petitioner further shows unto this Court that the question involved in this proceeding is a special and peculiar question of law, an early decision of which, will avoid litigation in other cases which will be controlled by force of the decision of this case, that the respondents

herein are a State Board, State offices, and other agencies, authorized to represent the public generally and that this is a case in which this Honorable Court should exercise its original jurisdiction.

Wherefore, your petitioner prays the issuance of an alternative writ commanding the respondents herein, within the time set by this Court, to admit your petitioner into the said University of Florida or to show this Court for their refusal so to do.

/s/ Benjamin F. Finley, Petitioner, /s/ Alex Akerman, Jr., Attorney for Petitioner, 401 First National Bank Building, Orlando, Florida.

[fols. 6-8] *Duly sworn to by Benjamin F. Finley and Alex Akerman, Jr. Jurats omitted in printing.*

[fols. 9-10] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

ORDER GRANTING PETITION FOR ALTERNATVE WRIT—June 10, 1949

Upon consideration of the petition of relator for an Alternative Writ of Mandamus in this cause, it is ordered that such writ issue returnable in thirty days from the date of said writ.

[fol. 11] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

ALTERNATIVE WRIT OF MANDAMUS—June 10, 1949

The State of Florida to the Board of Control of Florida, a body corporate under the laws of the State of Florida, J. Thomas Gurney, N. B. Jordan, Thomas W. Bryant, J. Hinson Markham, and Hollis Rinehart, as Members of the Board of Control of the State of Florida: J. Hillis Miller, as President of the University of Florida, and R. S. Johnson, as Registrar of the University of Florida, greeting:

Whereas, upon the sworn petition filed herein by the relator Benjamin F. Finley it has been made to appear:

1

That your petitioner is a citizen and a resident of Marion County; that the respondent, the Board of Control of Florida, is a body corporate created by the laws of the State of Florida and its principal office and place of business is in Tallahassee, Leon County, Florida; that the respondent, J. Thomas Gurney, is a citizen and resident of Orange County, Florida and is the duly appointed, qualified and acting member and chairman of said Boa[illegible] of Control; that the respondent, N. B. Jordan, is a citizen and resident of Gadsden County, Florida, and is a duly appointed, qualified and acting member of said Board of Control; that the respondent Thomas W. Bryant, is a citizen and resident of Polk County, Florida, and is a duly [fol. 12] appointed, qualified and acting member of said Board of Control; that the respondent, J. Hinson Markham, is a citizen and resident of Duval County, Florida, and is a duly appointed, qualified and acting member of said Board of Control; that the respondent, Hollis Rinehart, is a citizen and resident of Dade County, Florida, and is a duly appointed, qualified and acting member of said Board of Control; that the respondent, J. Hillis Miller, is a citizen and resident of Alachua County, Florida, and is the duly appointed and qualified president of said University of Florida; that the respondent, R. S. Johnson, is a citizen and resident of Alachua County, Florida, and is the duly appointed and qualified registrar of said University of Florida.

2

That the petitioner desires study agriculture at the graduate school at the University of Florida which is supported and maintained by the taxpayers of the State of Florida and has been arbitrarily refused admission to said University.

3

That the petitioner has a B. S. Degree from Florida A. & M. College.

4

That on or about the 4th day of April, A. D., 1949, your petitioner, duly applied for admission to the University of Florida for the purpose of entering the graduate school for the study of agriculture. He then possessed, and still possesses, all the scholastic, moral and other lawful qualifications prescribed by the Constitution and Statutes of the State of Florida, by the Board of Control of the State of Florida and by all the duly authorized officers and agents of said Board of Control and the University of Florida. He was then, and is still, ready and willing to pay all uniform fees and charges and to conform to all lawful uniform rules and regulations established by lawful authority for admission to said class.

[fol. 13] 5

That contrary to the usual and customary procedure, the respondent, R. S. Johnson, forwarded petitioner's application to the respondent, the Board of Control, and thereafter, to-wit: the 13th day of May, A. D., 1949, your petitioner, by and through his attorney, did appear before said Board of Control at a regular meeting of said Board of Control in Tallahassee, Leon County, Florida, for a hearing upon his application for admission to the University of Florida graduate school. That at said hearing the respondents, J. Thomas Gurney, N. B. Jordan, Thomas W. Bryant, J. Hinson Markham and Hollis Rinehart, did deny the application of your petitioner and did refuse to grant him admission to the graduate school for the study of agriculture at the University of Florida, and did then and there announce that said application was denied solely because of certain provisions of the Constitution and Statutes of the State of Florida which deny the right of your petitioner admission to the said University solely because of your petitioner's race and color, thus denying unto your petitioner the equal protection of laws solely on the ground of his race and color, contrary to the Constitution of the United States.

6

That the University of Florida is the only University in the State of Florida supported and maintained by the

taxpayers of the State of Florida which a graduate course in the study of agriculture is offered.

7

That the respondents, J. Hillis Miller, as president of the University of Florida and R. S. Johnson, as registrar, have refused to admit your petitioner to the University of Florida, solely because of race and color, thus denying your petitioner equal protection of the law, while at the same time admitting white applicants with less qualifications than your petitioner.

[fols. 14-15] 8

The petitioner further shows that he has no speedy, adequate remedy at law and that unless a Writ of Mandamus is issued he will be denied the right and privilege of pursuing the course of instruction at the University of Florida as hereinabove set out.

Your petitioner further shows unto this Court that the question involved in this proceeding is a special and peculiar question of law, an early decision of which, will avoid litigation in other cases which will be controlled by force of the decision of this case, that the respondents herein are a State Board, State offices, and other agencies, authorized to represent the public generally and that this is a case in which this Honorable Court should exercise its original jurisdiction.

Now, therefore, these are to command you the said Board of Control of Florida, a body corporate under the laws of the State of Florida, J. Thomas Gurney, N. B. Jordan, Thomas W. Bryant, J. Hinson Markham, and Hollis Rinehart, as members of the Board of Control of the State of Florida; J. Hillis Miller, as President of the University of Florida, and R. S. Johnson, as Registrar of the University of Florida to admit Benjamin F. Finley to the school of Agriculture of the said University of Florida as a student therein, or in the alternative, that you in your respective capacities in which you are herein joined, do show cause, if any you have, before this court on the 11th day of July, 1949 why peremptory writ of mandamus should not issue herein, and have you then and there this writ.

Witness the Honorable Alto Adams, Chief Justice of the Supreme Court of Florida and the seal of said court at Tallahassee, the Capital, this 10th day of June, 1949.

/s/ Guyte P. McCord, Clerk Supreme Court of Florida. (Seal.)

[fols. 16-17] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

MOTION TO QUASH—Filed July 11, 1949

Comes now the respondents in the above styled cause, by their attorneys, and move the court to quash the alternative writ of mandamus herein, and for grounds of said motion show:

(1) The relator has other adequate remedy at law.

(2) The relator has not complied with conditions precedent to a demand for the writ of mandamus.

(3) The relator has not made use of the means and manner provided by law to obtain his lawful demands.

Respectfully submitted, Richard W. Ervin, Attorney General, Frank J. Heintz, Assistant Attorney General, Attorneys for Respondents.

[fol. 18] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

ORDER DENYING MOTION TO QUASH—December 8, 1949

[fols. 19-21] Upon consideration of the motion of counsel for Respondents to quash the alternative writ of mandamus heretofore issued herein, it is ordered that said motion be and the same is hereby denied and respondents are allowed thirty days from this date to file answer in this cause.

[fol. 22] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

ANSWER OF RESPONDENTS, J. THOMAS GURNEY, THOMAS W. BRYANT, AND J. HENSON MARKHAM, TO ALTERNATIVE WRIT OF MANDAMUS—Filed January 7, 1950

The respondents, J. Thomas Gurney, Thomas W. Bryant, and J. Henson Mark*a*hm, for answer to the alternative writ of mandamus issued in this cause, say:

1

They admit the matters and facts alleged in paragraph numbered 1 of said alternative writ, except that they are no longer members of the Board of Control, nor is J. Thomas Gurney Chairman of said Board, as hereinafter more particularly set out.

2

They admit that the relator, at the time of the filing of his petition, desired to study agriculture at the graduate level at the University of Florida, and that the University of Florida is supported and maintained by the State of Florida, and the taxpayers thereof, and that the relator was refused admission to said University. Respondents [fol. 23] deny that the refusal of admission was arbitrary, and say that, on the contrary, admission of relator would have been, and would now be, unlawful, for reasons hereinafter set out.

3

They admit the matters and facts alleged in paragraph numbered 3 of said alternative writ.

4

They admit the matters and facts alleged in paragraph numbered 4 of said writ, except they deny that the relator, at the time of his application for admission, possessed, or now possesses, all lawful qualifications prescribed by the constitution and statutes of the State of Florida, the Board of Control and duly authorized officers and agents of the Board and of the University of Florida, in that the relator

is a member of the negro race, and under the laws of the State of Florida, the rules and regulations of the Board of Control, which laws, rules and regulations govern the officers and agents of said Board and University of Florida, admission to the University of Florida is permissible only to white students.

5

They admit that respondent, R. S. Johnson, Registrar of the University of Florida, forwarded petitioner's application to the Board of Control, and show that it was his duty so to do under the laws of the State of Florida and the rules and regulations of the Board of Control; and they admit that at a regular meeting of the Board of Control, on May 13, 1949, in Tallahassee, Florida, the relator appeared by his attorney for a hearing upon his application for admission to the University, and that at said meeting, attended by a majority of the members of the Board [fol. 24] of Control, the Board denied the application of relator and refused to grant his admission to the graduate school of agriculture at the University of Florida, because, under the constitution and statutes of the State of Florida, the relator, being a member of the negro race, could not be lawfully admitted to the University of Florida; but these respondents deny that such action on the part of the Board of Control was or is denial to the petitioner of equal protection of the laws on the ground of race or color or contrary to the constitution of the United States. At that time, the Board of Control informed relator, through his attorney, that because there was then no actually functioning State institution of higher learning open to members of the negro race, where the courses of study he desired were offered, the Board was prepared to provide for him such courses of study at a college or university agreeable to him in another state, fully equal and as valuable as any such course offered at any tax supported institution of higher learning in the State of Florida.

6

They admit that at the time of relator's application, the graduate school of agriculture at the University of Florida was the only tax supported and maintained school of agriculture at graduate level in the State of Florida at which

a graduate school level of agriculture was actually functioning and in operation, but since that time there has been authorized, ordered set up and provided for, a graduate school of agriculture at Florida Agricultural and Mechanical College for Negroes, at Tallahassee, Florida, which is a State supported and maintained institution of higher learning of the State of Florida within the State.

7

They admit that J. Hillis Miller, as President, and R. S. [fol. 25] Johnson, as Registrar of the University of Florida, respondents, refused to admit the relator to the University of Florida, but in so doing they acted under superior authority of the Board of Control and the statutes and constitution of the State of Florida, and deny that such action on their part was denial to the relator of equal protection of the law; and deny that they were at the same time admitting white applicants with less qualifications than the relator.

8

They deny that the relator has no adequate remedy at law other than the writ of mandamus for which he prays, and say that the relator does not have the right or privilege of pursuing the course of instruction requested at the University of Florida, for the reason that the relator is a member of the negro race and admission to the University of Florida is, by the laws of said State, restricted to students of the white race; and that other and substantially equal provisions for giving to relator his requested courses of study have been made, as herein set out; and they deny that the respondents have authority to represent the public generally and show that the authority of all of the respondents is limited and fixed by the statutes of the State of Florida, and subject to the supervising power and control of the State Board of Education of Florida; and the authority of the respondents, J. Hillis Miller and R. S. Johnson, is further limited and fixed by the rules and regulations of the Board of Control.

9

Further answering the alternative writ, these respondents show that at the time of relator's demand for admis-

sion to the graduate school of agriculture at the University of Florida, four other students of the negro race, scholastically qualified, demanded admission to other departments or colleges of the University of Florida, namely, the college [fol. 26] of law, chemical engineering and pharmacy which courses were offered at an institution of higher learning of the State established for white students, but not at the Florida Agricultural and Mechanical College for Negroes; that, upon being refused admission for the same reason as relator was refused admission, they filed their several petitions for mandamus, demanding their admission to the University of Florida at the same time that relator's petition was filed. Alternative writs were issued thereon by this court, presenting issues similar to those of the relator herein, and are now pending and companion cases.

10

These respondents say further, that in the constitution and statutes of the State of Florida it is provided that white and negro students shall not be taught in the same school, but that impartial provision shall be made for both. In pursuance of said constitutional and statutory requirements, the State of Florida has established and maintains certain institutions of higher learning for white students, among which are the University of Florida, at Gainesville, Florida, and the Florida State University, at Tallahassee, Florida, and has established and maintains an institution of higher learning for negro students, the Florida Agricultural and Mechanical College for Negroes, at Tallahassee, Florida. All of said institutions have been in operation for many years. All State institutions of higher learning are under the management and control of the respondent, Board of Control, subject to the supervising power and authority of the State Board of Education of Florida. From time to time, when the need therefor arose, courses were added at said institutions of higher learning and the curricula expanded to meet reasonable demands or requests of qualified students; and it has been the long [fol. 27] established and fixed policy of the State of Florida, the Board of Control, and the State Board of Education of Florida to add additional schools and courses of

instruction at all of said institutions when sufficient demand therefor appears.

11

Whatever rights the relator may have for instruction in his requested courses at a State operated institution of higher learning within the State, if it be determined that he has such rights, would be at the Florida Agricultural and Mechanical College for Negroes, and could not be lawfully given him at the University of Florida; and the Board of Control and its member respondents have the option to provide the rights of the relator in that respect, whatever they may be, at a State operated institution of higher learning within the State other than at the University of Florida; that is, at the Florida Agricultural and Mechanical College for Negroes.

After relator's original application for admission to the summer, 1949, term of the University of Florida, he made no further application for admission to any subsequent term or semester during the time these respondents remained members of the Board of Control.

12

In pursuance of the policy set out in paragraph numbered 10 above, the Board of Control, in October, 1948, and prior to the demand of relator or other applicant, included in its budget for the ensuing biennium for the Florida Agricultural and Mechanical College for Negroes, funds for the establishment of schools or colleges or law, chemical engineering, pharmacy, journalism social work, [fol. 28] library science, and other graduate courses, for which it appeared requests might be made at said last named institution; and, shortly before its adjournment, in June, 1949, the Legislature, as was customary, made an appropriation for the Florida Agricultural and Mechanical College for Negroes, in which there were certain funds which might lawfully be used to establish and install said demanded courses of study, or some of them. It then appeared that insufficient funds would be available to satisfy the appropriations made for the several State agencies, and the State Budget Commission, in the exercise of its lawful authority, withheld a very substantial portion of all

legislative appropriations, including that for the Florida Agricultural and Mechanical College for Negroes, until additional revenue should be provided by the Legislature at a special session to be called for that purpose. At the special session, in September, 1949, additional revenue was provided for all State appropriations, including that for the Florida Agricultural and Mechanical College for Negroes, and a part, but not all, of the funds withheld have been released.

13

Further answering, these respondents show that the terms of office of the respondents, J. Thomas Gurney, Hollis Rinehart, and J. Henson Markham, who were a majority of the Board members, expired on June 27, 1949, but on request of the Governor of the State they held over until after said special session of the Legislature, when, on October 18, 1949, their successors were appointed and qualified as members of the Board of Control; and, thereupon, said three respondents ceased to be members of the Board or to have any further authority and could take no further action in the premises. These respondents are without knowledge or information, except hearsay, as to what [fols. 29-31] may have transpired in regard to the matters alleged in said alternative writ since the date when their successors qualified.

Wherefore, these respondents, having no longer any authority as to anything alleged in said writ, or claim therein, and no power to respond to any order that may be entered thereon, pray that as to them, and each of them, this proceeding be dismissed.

/s/ Richard W. Ervin, Attorney General, /s/ Frank J. Heintz, Assistant Attorney General, Attorneys for Respondents.

I do certify that copy hereof has been furnished to Alex Akerman, Jr., attorney for relator, by mail, this 7th day of January, 1950.

/s/ Frank J. Heintz, Assistant Attorney General, Attorney for Respondents.

[fol. 32] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

ANSWER OF RESPONDENTS, BOARD OF CONTROL, A CORPORATION, N. B. JORDAN, HOLLIS RINEHART, J. HILLIS MILLER, AND R. S. JOHNSON, TO ALTERNATIVE WRIT OF MANDAMUS—Filed January 7, 1950

The respondents, Board of Control, a public corporation of the State of Florida, N. B. Jordan, Hollis Rinehart, J. Hillis Miller, and R. S. Johnson, for answer to the alternative writ of mandamus issued in this cause, say:

1

They admit the matters and facts alleged in paragraph numbered 1 of said alternative writ, except that respondents, J. Thomas Gurney, Thomas W. Bryant, and J. Henson Markham, are no longer members of the Board of Control, nor is J. Thomas Gurney now Chairman of said Board, as hereinafter more particularly set out.

2

They admit that the relator, at the time of the filing of his petition, desired to study agriculture at graduate level at the University of Florida, and that the University of Florida is supported and maintained by the State of Florida, and the taxpayers thereof, and that the relator was refused admission to said University. Respondents deny that the refusal of admission was arbitrary, and say that, [fol. 33] on the contrary, admission of relator would have been, and would now be, unlawful, for reasons hereinafter set out.

3

They admit the matters and facts alleged in paragraph numbered 3 of said alternative writ.

4

They admit the matters and facts alleged in paragraph numbered 4 of said writ, except they deny that the relator, at the time of his application for admission, possessed, or now possesses, all lawful qualifications prescribed by

the constitution and statutes of the State of Florida, the Board of Control and duly authorized officers and agents of the Board and of the University of Florida, in that the relator is a member of the negro race, and under the laws of the State of Florida, the rules and regulations of the Board of Control, which laws, rules and regulations govern the officers and agents of said Board and University of Florida, admission to the University of Florida is permissible only to white students.

5

They admit that respondent, R. S. Johnson, Registrar of the University of Florida, forwarded petitioner's application to the Board of Control, and show that it was his duty so to do under the laws of the State of Florida and the rules and regulations of the Board of Control; and they admit that at a regular meeting of the Board of Control, on May 13, 1949, in Tallahassee, Florida, the relator appeared by his attorney for a hearing upon his application for admission to the University, and that at said meeting, attended by a majority of the members of the Board of Control, the Board denied the application of [fol. 34] relator and refused to grant him admission to the graduate school of agriculture at the University of Florida, because, under the constitution and statutes of the State of Florida, the relator, being a member of the negro race, could not be lawfully admitted to the University of Florida; but these respondents deny that such action on the part of the Board of Control was or is denial to the petitioner of equal protection of the laws on the ground of race or color or contrary to the constitution of the United States. At that time, the Board of Control informed relator, through his attorney, that because there was then no actually functioning Florida State institution of higher learning open to members of the negro race, where the courses of study he desired were offered, the Board was prepared to provide for him such courses of study at a college or university agreeable to him in another state, fully equal and as valuable as any such course offered at any tax supported institution of higher learning in the State of Florida.

6

They admit that at the time of relator's application, the graduate school of agriculture at the University of Florida was the only tax supported and maintained school of agriculture at graduate level in the State of Florida at which a graduate level school of agriculture was actually functioning and in operation, but, since that time there has been authorized, ordered set up and provided for, a graduate school of agriculture at Florida Agricultural and Mechanical College for Negroes, at Tallahassee, Florida, which is a State supported and maintained institution of higher learning of the State of Florida within the State.

7

They admit that J. Hillis Miller, as President, and R. S. [fol. 35] Johnson, as Registrar of the University of Florida, respondents, refused to admit the relator to the University of Florida, but in so doing they acted under superior authority of the Board of Control and the statutes and constitution of the State of Florida, and deny that such action on their part was denial to the relator of equal protection of the law; and deny that they were at the same time admitting white applicants with less qualifications than the relator.

8

They deny that the relator has no adequate remedy at law other than the writ of mandamus for which he prays, and say that the relator does not have the right or privilege of pursuing the course of instruction requested at the University of Florida, for the reason that the relator is a member of the negro race and admission to the University of Florida is, by the laws of said State, restricted to students of the white race; and that other and substantially equal provisions for giving to relator his requested courses of study have been made, as herein set out; and they deny that the respondents have authority to represent the public generally and show that the authority of all of the respondents is limited and fixed by the statutes of the State of Florida, and subject to the supervising power and control of the State Board of Education of Florida; and the authority of the respondents, J. Hillis Miller and R. S.

Johnson, is further limited and fixed by the rules and regulations of the Board of Control.

9

Further answering the alternative writ, these respondents show that at the time of relator's demand for admission to the graduate school of agriculture at the University of Florida, four other students of the negro race, scholastically qualified, demanded admission to other departments or colleges of the University of Florida, namely, the Col- [fol. 36] lege of law, chemical engineering, and pharmacy, which courses were offered at an institution of higher learning of the State established for white students, but not at the Florida Agricultural and Mechanical College for Negroes; that, upon being refused admission for the same reason as relator was refused admission, they filed their several petitions for mandamus, demanding their admission to the University of Florida at the same time that relator's petition was filed. Alternative writs were issued thereon by this court, presenting issues similar to those of the relator herein, and are now pending and companion cases.

10

These respondents say further, that in the constitution and statutes of the State of Florida it is provided that white and negro students shall not be taught in the same school, but that impartial provision shall be made for both. In pursuance of said constitutional and statutory requirements, the State of Florida has established and maintains certain institutions of higher learning for white students, among which are the University of Florida, at Gainesville, Florida, and the Florida State University, at Tallahassee, Florida, and has established and maintains an institution of higher learning for negro students, the Florida Agricultural and Mechanical College for Negroes, at Tallahassee, Florida. All of said institutions have been in operation for many years. All State institutions of higher learning are under the management and control of the respondent, Board of Control, subject to the supervising power and authority of the State Board of Education of Florida. From time to time, when the need therefor arose, courses were added at said institutions of higher learning

and the curricula expanded to meet reasonable demands or requests of qualified students; and it has been the long established and fixed policy of the State of Florida, the [fol. 37] Board of Control, and the State Board of Education of Florida to add additional schools and courses of instruction at all of said institutions when sufficient demand therefor appears.

11

Whatever rights the relator may have for instruction in his requested courses at a State operated institution of higher learning within the State, if it be determined that he has such rights, would be at the Florida Agricultural and Mechanical College for Negroes, and could not be lawfully given him at the University of Florida; and the Board of Control and its member respondents have the option to provide the rights of the relator in that respect, whatever they may be, at a State operated institution of higher learning within the State other than at the University of Florida; that is, at the Florida Agricultural and Mechanical College for Negroes.

After relator's original application for admission to the summer, 1949, term of the University of Florida, he has made no further application for admission to any subsequent term or semester, and the respondents now have pending before them no application by the Relator for instruction in any course in any institution, nor are they advised as to whether relator now desires instruction in his requested courses at any future term or semester at any State institution of higher learning.

12

In pursuance of the policy set out in paragraph numbered 10 above, the Board of Control, in October, 1948, and prior to the demand of relator or other applicant, included in its budget for the ensuing biennium for the Florida Agricultural and Mechanical College for Negroes, funds for the establishment of schools or colleges of law, chem- [fol. 38] ical engineering, pharmacy, journalism, social work, library science, and other graduate courses, for which it appeared requests might be made at said last named institution; and, shortly before its adjournment, in June,

1949, the Legislature, as was customary, made an appropriation for the Florida Agricultural and Mechanical College for Negroes, in which there were certain funds which might lawfully be used to establish and install said demanded courses of study, or some of them. It then appeared that insufficient funds would be available to satisfy the appropriations made for the several State agencies, and the State Budget Commission, in the exercise of its lawful authority, withheld a very substantial portion of all legislative appropriations, including that for the Florida Agricultural and Mechanical College for Negroes, until additional revenue should be provided by the Legislature at a special session to be called for that purpose. At the special session, in September, 1949, additional revenue was provided for all State appropriations, including that for the Florida Agricultural and Mechanical College for Negroes, and a part, but not all, of the funds withheld have been released.

13

Further answering, these respondents show that the terms of office of the respondents, J. Thomas Gurney, Hollis Rinehart, and J. Henson Markham, who were a majority of the Board members, expired on June 27, 1949, but on request of the Governor of the State they held over until after said special session of the Legislature, when, on October 18, 1949, their successors were appointed and qualified as members of the Board of Control; and, thereupon, said three respondents ceased to be members of the Board or to have any further authority and could take no further action in the premises, and are now without [fol. 39] power or authority to respond to any order which may be entered herein.

14

And respondents further say that, in the meantime, the period for admission of any students, white or colored, to any of the State institutions of higher learning, at the summer term and fall term of 1949, had expired; and, on the 21st day of December, 1949, the Board of Control, as newly constituted, set up and established a graduate school of agriculture and the other courses demanded by other negro applicants, as hereinabove set out, at the Florida

Agricultural and Mechanical College for Negroes, by resolution, copy of which is hereto attached, as Exhibit A, and made a part of this answer; and the Board of Control has directed the authorities at the State institutions of higher learning to put said resolution and the things therein authorized and directed into immediate practice and effect.

As authorized in said resolution, if the relator still declines to accept out-of-state scholarship or other provision which may be made for his instruction in the courses he has requested elsewhere than at a State institution established for white students exclusively, and it should be held that said arrangement is insufficient to satisfy the relator's lawful demands, the respondent, Board of Control, has made provision for relator's immediate admission and enrollment at the Florida Agricultural and Mechanical College for Negroes, in its graduate school of agriculture established at that institution, and is ready to there admit him, provided the relator shall make his application for instruction in said course within the time allowed for members of any other group to apply for admission [fol. 40] to said course at any State institution of higher learning. And, in the event the necessary facilities, equipment and personnel for said course of study should not be immediately available, at the Florida Agricultural and Mechanical College for Negroes, in Tallahassee, upon his said renewed timely application for instruction in said course of study, the Board of Control has made provision for his instruction in said course of study, as in said resolution provided, at the only other institution of higher learning in the State of Florida offering such course, until such time as adequate and comparable facilities and personnel for such course of study, substantially equal to those provided at any tax supported institution of higher learning in the State, can be obtained and physically set up at the Florida Agricultural and Mechanical College for Negroes, in Tallahassee, Florida.

Wherefore these respondents say that relator is not entitled to peremptory writ, but the same should be denied,

the alternative writ quashed, and respondents hence dismissed.

/s/ Richard W. Ervin, Attorney General, /s/ Frank J. Heintz, Assistant Attorney General, Attorneys for Respondents.

I do certify that copy hereof has been furnished to Alex Akerman, Jr., attorney for relator, by mail, this 7th day of January, 1950.

/s/ Frank J. Heintz, Assistant Attorney General, Attorney for Respondents.

[fol. 41] EXHIBIT "A" TO ANSWER

Resolution

Whereas, for many years it has been the policy of the Board of Control to establish at the Florida Agricultural and Mechanical College for Negroes such schools and courses as may be offered at any other of the State institutions of higher learning, whenever there were a sufficient number of applicants to justify the establishment of such schools and courses, and in the meantime providing for the occasional negro applicant for education in those courses by out-of-state scholarships; and it is believed that such policy has been carried out over many years to the reasonable satisfaction of all parties concerned; and this Board reaffirms that policy; and,

Whereas, Certain negro students have demanded admission to the University of Florida, where such courses are now given, and continuation of their demands is not unlikely; and,

Whereas, The Constitution of the State of Florida requires that students of the white and negro races "shall not be taught in the same school, but impartial provision shall be made for both";

Now, therefore, in order to comply with the constitution and laws of the State of Florida, as near as may be under existing circumstances, be it resolved that there is hereby established, at the Florida Agricultural and Mechanical College for Negroes, schools of law, mechanical engineer-

ing, agriculture at graduate level and pharmacy at graduate level; and qualifications for admission to said courses shall be the same as those required for admission to said courses at other State institutions of higher learning in the State of Florida; and

Be it further resolved, That efforts to acquire the necessary personnel, facilities, and equipment for such courses be reactivated and diligently prosecuted, with the view of installing said personnel, facilities, and equipment for [fol. 42] such courses at the Florida Agricultural and Mechanical College for Negroes, at Tallahassee, Florida, at the earliest date possible, thereby to more fully comply with the Constitution and laws of the State of Florida; and that, in the meantime, and while diligent preparation is being made to physically set up said schools and courses at the Florida Agricultural and Mechanical College for Negroes, at Tallahassee, Florida, further effort to be made to arrange with said applicants for out-of-state scholarships or other arrangements agreeable to them, equal to their reasonable individual needs and affording them full and complete opportunity to obtain the education for which they have applied, where obtainable, at institutions other than Florida state operated institutions of learning for white students, and under circumstances and surroundings fully as good as may be offered at any State operated institution of higher learning in the State of Florida; and

Be it further resolved, in the event the court should hold that the foregoing provisions are insufficient to satisfy the lawful demands of said applicants, that temporarily, and only until completion of such acquisition of personnel, facilities and equipment for installation at the Florida Agricultural and Mechanical College for Negroes, at Tallahassee, comparable to those in institutions of higher learning of the State established for white students, the Florida Agricultural and Mechanical College for Negroes shall arrange for supplying said courses to its enrolled and qualified students at a Florida state operated institution of higher learning, where said courses may be given, and there the instructional personnel and facilities of such institution in the requested courses shall be provided and used for the education of said applicants at such times and places, and in such manner, as the latter institution may

prescribe; and the authorities of such last described state operated institution of higher learning shall cooperate in [fols. 43-44] making such arrangements, to the end that there shall be available to said students of the Florida Agricultural and Mechanical College for Negroes, substantially equal opportunity for education in said courses as may be provided for white students under like circumstances. In providing such education, the authorities of both institutions shall at all times observe all requirements of the laws of the State of Florida in the matter of segregation of the races, etc.

Be it further resolved, That such instruction and facilities to be provided by the State institution of higher learning, temporarily, as herein directed, shall be provided in such manner as will insure to graduates in such courses the same privileges and benefits as may be accorded by law to graduates of the same courses in institutions of higher learning in the State established for white students.

Be it further resolved, That actual cost of supplying said instruction shall be accurately determined and the institution reimbursed therefor from such funds appropriated for the Florida Agricultural and Mechanical College for Negroes as may lawfully be used for that purpose.

[fols. 45-46] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

MOTION FOR PEREMPTORY WRIT—Filed January 19, 1950

Comes now the Relator, Benjamin F. Finley, and moves the Court to issue a Peremptory Writ of Mandamus directed to the Respondents, Board of Control of Florida; N. B. Jordan and Hollis Rinehart as members of the Board of Control of Florida; J. Hillis Miller as President of the University of Florida; and R. S. Johnson as Registrar of the University of Florida, requiring said Respondents to admit Relators to the University of Florida, the Answer of said Respondents notwithstanding, and as grounds for said Motion says:

1. That the allegations contained in the Answer filed by said Respondents wholly fail to set forth any legal reason why a Peremptory Writ should not issue.

/s/ Alex Akerman, Jr., Attorney for Relator.

I do certify that copy hereof has been furnished Richard W. Ervin, Attorney General and Frank J. Heintz,

Assistant Attorney General, attorneys for respondents, by mail, this 17th day of January, A. D., 1950.

/s/ Alex Akerman, Jr., Attorney for Relator.

[fol. 47] IN THE SUPREME COURT OF FLORIDA

June Term, A. D. 1950

En Banc

THE STATE OF FLORIDA, ex rel., BENJAMIN F. FINLEY, Relator,

vs.

BOARD OF CONTROL, a Body Corporate, etc., et al., Respondents

Mandamus

A case of original jurisdiction—Mandamus.

Richard W. Ervin, Attorney General and Frank J. Heintz, Assistant Attorney General, for Respondents.

OPINION—Filed August 1, 1950

Sebring, J.

The relator, Benjamin F. Finley, is a negro citizen and resident of the State of Florida. Except as to the matter of race and color, he possesses all the scholastic, moral and other qualifications prescribed by the laws of Florida and the rules and regulations of the State Board of Control for admission to the University of Florida, a state supported institution of higher learning maintained exclusively for white students.

In April 1949 Finley applied for admission to the University of Florida for the purpose of entering the graduate school for the study of agriculture. His application was denied on the sole ground that he was a member of the negro race. Finley thereupon instituted this mandamus [fol. 48] action, alleging the matters above set forth, averring that the University of Florida is the only tax-supported university in the State at which courses of agriculture for graduate students are offered, and charging that the refusal of the governing authorities to admit him solely

because he was a negro constituted an arbitrary and illegal denial of the equal protection of the laws guaranteed him by the Fourteenth Amendment to the Federal Constitution.

In due course the members of the Board of Control filed their return to the alternative writ issued in the cause. In their return the Board set up the same defenses as were filed by the Board of Control in State ex rel. Hawkins v. Board of Control, this day decided, and offered to the relator, Finley, the same opportunities in respect to graduate courses in agriculture as were made available to the relator in that case with reference to law school training; that is to say, offered him the opportunity to secure instruction in a graduate school of agriculture at a university or college outside the State of Florida, where negro students are eligible for admission, and as an alternative, offered to enroll him at the Florida Agricultural and Mechanical College for Negroes, in the graduate school of agriculture recently established by the Board at that institution and to make temporary provision for his instruction in the graduate school of agriculture at the University of Florida, in the event the necessary facilities, equipment and personnel for said course of study should not be immediately available at the Florida Agricultural and Mechanical College for Negroes at the time of his enrollment.

A motion has been made for the issuance of a peremptory writ notwithstanding the return filed by the respondents, on the ground that the opportunities offered to the relator do not afford him the equal protection of the laws guaranteed by the Federal Constitution.

[fols. 49-50] Every question raised by the parties in this suit has been considered and decided by this court in State ex rel. Hawkins vs. Board of Control, supra, and hence it follows that the opinion and judgment rendered in that cause should control the disposition that should be made of the case at bar.

It is so ordered.

Adams, C. J., Terrell, Chapman, Thomas, Hobson and Roberts, JJ., concur.

[fol. 51] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

MOTION FOR PEREMPTORY WRIT—Filed May 16, 1951

Comes now the Relator, Benjamin F. Finlay by his undersigned Attorney and moves the Court to issue a Peremptory Writ of Mandamus directed to the Respondents, Board of Control of Florida; N. B. Jordan and Hollis Rinehart as members of the Board of Control of Florida; J. Hollis Miller as President of the University of Florida; and R. S. Johnson Registrar of the University of Florida, requiring said Respondents to admit Relator to the University of Florida, the Answer of said Respondents notwithstanding, and as grounds for said Motion says:

1. That the Respondents have failed to provide Relator the equal educational opportunities in accordance with the interlocutory order of this Court rendered on August 1, 1950; that Relator hereby applies for further relief in this cause in accordance with the Court's mandate and requests this Court to issue a peremptory writ of mandamus at this time as prayed for in Relator's complaint requiring the Respondents to admit him instanter to the University of Florida in order that he may thereby receive educational opportunities and advantages equal to those available to white persons at the University of Florida.

[fols. 52-53] 2. That the Relator has exhausted all reasonable means available to him for attaining admittance to the University of Florida the only institution in the State of Florida supported and maintained by the taxpayers of the State of Florida offering courses necessary to obtaining the degree in his chosen profession; that the creation of the purported school of agriculture on paper for Negroes at the Florida A. & M. College and/or the alternative plan adopted by the Board of Control of Florida and made a part of the laws as required by the Fourteenth Amendment to the Constitution of the United States.

3. That on August 1, 1950, when the Court handed down a decision in this cause, the Respondents had made available, on paper, agricultural education at the Florida A. & M. College for Negroes; that in fact there is no agri-

cultural education at the Florida A. & M. College; and that the only state-supported institution where Relator can secure educational opportunities and advantages for an agricultural education equal those available to white students is at the University of Florida; that no steps have been made to provide Relator with agricultural educational opportunities and advantages within the state since the decision of this Court, on August 1, 1950; and that Relator has now lost one whol*d* year in which he could have been pursuing an agricultural education.

Wherefore, in accordance with the decision of this Court, on August 1, 1950, Relator hereby applies for further relief and requests the Court to issue a peremptory writ of mandamus ordering his admission as a regular student in the Agricultural School at the University of Florida.

/s/ H. E. Hill, Attorney for Relator.

[fols. 54-55] IN THE SUPREME COURT OF FLORIDA

June Term, A. D. 1951, En Banc

Supreme Court #21,140

THE STATE OF FLORIDA, ex rel., BENJAMIN F. FINLEY, Relator,

vs.

BOARD OF CONTROL, a body corporate, etc., et al., Respondents

A Case of original jurisdiction—Mandamus.

H. E. Hill, for Relator.

Richard W. Ervin, Attorney General and Frank J. Heintz, Assistant Attorney General, for Respondents.

OPINION—Filed June 15, 1951

Per Curiam.

The motion for the entry of a peremptory writ of mandamus notwithstanding the return filed by the Respondents in this proceeding is denied on authority of the ruling in The State of Florida, ex rel., Virginia D. Hawkins, Relator, vs. Board of Control, a body corporate, etc., et al., Respondents, rendered this 15th day of June, 1951.

Sebring, C. J., Terrell, Chapman, Adams, Hobson and Roberts, J.J., Concur.

Thomas, J., Not Participating.

[fol. 56] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

MOTION DIRECTING CERTIFICATION OF RECORD—Filed August 15, 1951

Comes now the Relators by their attorney undersigned and thereby directing the Clerk to certify the entire record in the above styled cause, including pleadings, testimony and exhibits, if any.

/s/ H. E. Hill, 525 Second Avenue, Daytona Beach, Florida, Attorney for Relators.

Certificate of Service

I do hereby certify that copy hereof have been furnished by (mail) (delivery) this 14th day of August 1951 to: Richard T. Ervin, Attorney General.

/s/ H. E. Hill, Attorney.

[fol. 57] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 58] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. —

STATE EX REL HAWKINS, et al., Petitioners,

vs.

BOARD OF CONTROL

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 15th, 1951.

Stanley Reed, Associate Justice of the Supreme Court of the United States.

Dated this 13th day of September, 1951.

[fol. 30] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

MOTION FOR PEREMPTORY WRIT AND FINAL JUDGMENT—
Filed May 28, 1952

Comes now the Relator, Benjamin F. Finley, by his undersigned attorney and moves this Honorable Court to issue a Peremptory Writ of Mandamus directed to Respondents, Board of Control of Florida; N. B. Jordan and Hollis Rhinehart as members of the Board of Control; and R. S. Johnson, Registrar of the University of Florida, requiring said Respondents to admit Relator to the University of Florida and for Final Judgment in said cause, the answer of said Respondents notwithstanding, and as grounds for said Motion says:

I

That since the rendition of the Courts initial opinion in the case of State ex rel. Hawkins vs. Board of Control of Florida, et al., 47 So. 2d 608 et seq., the Relator has re-applied and made due and regular reapplication for enrollment and admission to the School of Agriculture at the University of Florida and has complied with all requirements necessary for enrollment and admission at said institution to no avail and is beset with obstacles wholly beyond the intendment of his constitutional rights and the essentials of human well-being and beyond any recognized constitutional social expediency; the Relator having exhausted his remedies save and except the relief to be afforded by this Honorable Court.

II

That the judgment heretofore rendered by this Honorable Court in this said cause is a nisi order and interlocutory in its nature and not an appealable judgment. That the Relator desires to take an appeal therefrom but is precluded from so doing unless this Court enters a Final [fols. 31-32] Judgment and to that end the Relator stands on his pleadings as filed herein.

III

That all pleadings have been submitted, issues joined and proof taken and being conscious of the morality and justice of his cause as now here contended for thus submit himself to this Honorable Court to the end that a Peremptory Writ of Mandamus be granted as prayed for and that a Final Judgment be entered in this cause.

Wherefore, Relator moves this Honorable Court for the issuance of a Peremptory Writ of Mandamus and that Final Judgment be entered in the above entitled cause.

(S.) H. E. Hill, 525½ Second Avenue, Daytona Beach, Florida.

[fols. 33-34] IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D. 1952, EN BANC

THE STATE OF FLORIDA, ex rel. BENJAMIN F. FINLEY, Relator,

vs.

BOARD OF CONTROL, a Body Corporate, etc., et al., Respondents

MANDAMUS, SUPREME COURT #21,140

A case of original jurisdiction—Mandamus.

H. E. Hill, for Relator.

Richard W. Ervin, Attorney General and Frank J. Heintz, Assistant Attorney General, for Respondents.

OPINION—Filed August 1, 1952

SEBRING, C. J.:

This is a companion case to State ex rel. Hawkins v. Board of Control, — So. 2d —, decided this 1st day of August, 1952. The conclusions reached therein apply equally to the contentions presented in this case.

The motion for peremptory writ should be denied, the alternative writ heretofore entered should be quashed, and the cause should be dismissed at the cost of the relator.

It is so ordered.

Terrell, Thomas, Hobson, Roberts and Mathews, J.J., and Hocker, Associate Justice, Concur.

[fol. 35] In the Supreme Court of Florida

[Title omitted]

Motion—Filed August 12, 1952

Come now the Relators, by their undersigned attorney, and direct the Clerk to certify the entire record respectively in the above styled cause, to wit:

1. Petition for Alternative Writ of Mandamus.
2. Order Granting Petition for Alternative Writ of Mandamus.
3. Alternative Writ of Mandamus.
4. Respondents Motion to Quash.
5. The Order Denying Respondents Motion to Quash.
6. Answer of Respondents.

[fol. 36] 7. Relators Motion for Peremptory Writ.

8. Opinion of the Court, Aug. 1, 1950.
9. Relators Motion for Peremptory Writ.
10. Opinion of the Court, June 15, 1951.
11. Relators Motion Directing Certification of Record.
12. Relators Motion for Peremptory Writ and Final Judgment.

(S.) H. E. Hill, 525½ Second Avenue, Daytona Beach, Florida, Attorney for Relators.

Certificate of Service omitted in printing.

[fol. 37] Clerk's Certificate to foregoing transcript omitted in printing.